

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

DEREK BAKER, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, legally
uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13817663
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 5, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**DEREK BAKER
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE
STATE COMPENSATION INSURANCE FUND**

AS/ara

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *mc*

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

INTRODUCTION:

On April 11, 2023, the Defendant filed a timely and verified petition for reconsideration dated April 11, 2023, alleging that the undersigned WCJ erred in his Findings of Fact & Award dated March 22, 2023. The Defendant contends that the undersigned WCJ should have apportioned only 20% of the permanent disability for the Applicant's right eye injury to the Applicant's industrial hypertension and should not have determined that there was no reasonable basis for apportionment.

STATEMENT OF FACTS:

The Applicant, while employed during the period December 27, 2010 to April 28, 2021, as a parole agent, sustained industrial injury to his cardiovascular system (in the form of hypertension) and right eye.

The parties jointly submitted into evidence at the trial on February 28, 2023, the panel qualified medical evaluation reports of Mark H. Hyman, M.D., and David Lazar, M.D.

On March 22, 2023, the undersigned WCJ issued his Findings of Fact & Award finding that the Applicant sustained 73% permanent disability with no reasonable basis for apportionment to non-industrial factors with the need for further medical treatment. In his decision, the undersigned found no basis for apportionment for either the Applicant's cardiovascular system and right eye pursuant to Labor Code § 4663(e).

Aggrieved by the undersigned WCJ's decision, the Defendant filed its petition for reconsideration.

DISCUSSION:

Pursuant to Labor Code § 4663(b):

“A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.”

However, pursuant to Labor Code § 4663(e), presumptively compensable injured parts of body under Labor Code § 3212.2, are prohibited from apportionment. [Dept. of Corrections and Rehabilitation (Alexander) (2008) 73 Cal. Comp. Cases 1294, 1298]

Pursuant to Labor Code § 3212.2, “for officers and employees in the Department of Corrections having custodial duties” suffering injury in the form of heart trouble “so developing and manifesting itself . . . shall be presumed to arise out of and in the course of employment.”

In defining “heart trouble,” in Muznik v. Workers’ Comp. Appeals Bd. (1975) 40 Cal. Comp. Cases 578, the Court of Appeal wrote the following:

“[T]he phrase ‘heart trouble’ assumes a rather expansive meaning. This result is further evidenced by the Legislature’s decision not to utilize a medical term or to list or require any specific malady for the presumption of [§] 3212 to become operative, but rather, to employ a lay term which is not necessarily related to physical deterioration or ‘disease’ at all. As defined in Webster’s Dictionary, the term ‘trouble’ when used as a noun covers a wide range of meanings, including distress, affliction, anxiety, annoyance, pain, labor, or exertion. The intent of the authors of the amendment adding the phrase ‘heart trouble’ to [§] 3212 was no doubt to have the meaning of that phrase encompass any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body, which, though not envisioned in 1939, might be produced by the stress and strain of the particular jobs covered by the section.” [Muznik, *supra*, 40 Cal. Comp. Cases at p. 587.]

In applying Muznik, the WCAB has concluded that hypertensive heart disease constitutes “heart trouble” pursuant to Labor Code § 3212.2 because that condition physically affects the heart. [Hinojosa v. North Kern State Prison (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 223, *9 (Appeals Board noteworthy panel decision).]

In this case, Dr. Hyman, in his report dated April 28, 2021, on pages seven to eight, diagnosed the Applicant with having had a cerebrovascular accident resulting from hypertensive heart disease.

Dr. Lazar, in his panel qualified medical evaluation report dated August 6, 2021, on page eight, diagnosed the Applicant with “retinal changes consistent with a central retinal artery occlusion of the right eye . . . [resulting from] a blockage of blood to the retina of one eye.” Dr. Lazar noted, on page five of his report, that the Applicant had suffered a ruptured blood vessel in his right eye. In Dr. Lazar’s deposition on November 19, 2021, he testified that hypertension increases the chance of having an occlusion in the eye. [7:5-7]

Dr. Lazar opined in his report dated December 8, 2021, on page 12, that the Applicant sustained 20% whole person impairment to his visual system with 20% apportionment of the vascular occlusion to the Applicant’s hypertension exacerbated by work.

Given that the Applicant’s right eye injury resulted from an obstruction of retinal blood flow that reasonably related to the Applicant’s hypertension likely having caused a ruptured blood vessel, the undersigned WCJ determined that the right eye injury was covered under the heart trouble presumption and was immune from apportionment due to the Applicant’s eligibility under Labor Code § 3212.2. Accordingly, there is no reasonable basis to disturb the undersigned WCJ’s decision.

RECOMMENDATION:

The undersigned WCJ respectfully recommends that the Defendant's petition for reconsideration dated April 11, 2023, be denied.

Date: **April 12, 2023**

**DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**